United States Senate
WASHINGTON, DC 20510

March 25, 2011

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Leibowitz and Commissioners Kovacic, Rosch, Ramirez, and Brill:

We are writing to inquire whether the Federal Trade Commission (FTC) is fully utilizing the regulatory authority granted to it by Congress to ensure American consumers are paying a fair price for gasoline. We urge you to use this authority aggressively to ensure that recent crude oil market price spikes and volatility are not the result of manipulative practices or anticompetitive behavior.

As you know, volatile oil prices have recently driven gasoline and diesel pump prices above $4 per gallon in some regions. High prices are leading our constituents to again question whether widely fluctuating prices can be explained by supply and demand fundamentals. For example, December crude oil prices have varied from $85 per barrel in 2007, to $31 in 2008, to $73 in 2009, to $86 in 2010, with peaks at $147 in June 2008 and around $104 today. Meanwhile, a 20 percent spike in oil prices since the unrest in Libya began in mid-February coincides with Commodity Futures Trading Commission (CFTC) data showing that as of March 1st there has been a 25 percent spike in the number of oil futures contracts created by traders without a commercial interest in oil delivery. This finding is supported by data released by CFTC Commission Bart Chilton on March 15th which showed that hedge funds and other speculators have increased their energy market positions 64 percent since June 2008 to the highest level on record. While many businesses are likely engaged in legitimate hedging decisions, the increased market participation must prompt rigorous FTC oversight to ensure that all activity is consistent with a competitive market.

While some oil speculators may be taking advantage of Middle East turmoil, hardworking American families and businesses are footing the bill with more pain at the pump, higher food costs, and inflationary fears, all of which jeopardize our nation's fragile economic recovery. Federal Reserve Chairman Ben Bernanke reported to Congress recently that "sustained rises in the prices of oil or other commodities would represent a threat both to economic growth and to overall price stability, particularly if they were to cause inflation expectations to become less well anchored." And according to IHS economist Chris Christopher, every 24-cent increase in gasoline for longer than two years lowers U.S. employment by 410,000.

To protect the integrity of energy markets, family pocketbooks, and our economic recovery, it is critical that the FTC aggressively use all of the tools at its disposal to investigate and prosecute market manipulation. Fortunately, unlike during the oil price spikes of 2008, the Commission has historic new tools to combat any manipulative or deceptive conduct that has a "sufficient nexus" to wholesale oil markets, including such conduct in oil futures markets.

Congress vested the Commission with new oil market anti-manipulation authority in Section 811 of the Energy Independence and Security Act of 2007 (42 U.S.C. § 17301) to combat fraudulent and manipulative conduct in increasingly volatile oil markets. The Commission stated in its final Petroleum Market Manipulation Rule that went into effect on November 4, 2009 that its authority reaches manipulative or deceptive conduct that occurs ''in connection with'' the purchase or sale of petroleum at wholesale, including such conduct in the futures market "provided that there is a sufficient nexus between the prohibited conduct and the markets for these products." Specifically, the Commission's final rule states that:

> *"...the Commission declines to adopt a blanket safe harbor for futures markets activities. Nonetheless, consistent with its longstanding practice of coordinating its law enforcement efforts with other federal or state law enforcement agencies where it has overlapping or complementary jurisdiction ... the Commission intends to work cooperatively with the CFTC to execute the Commission's objective to prevent fraud or deceit in wholesale oil markets."*

The Commission modeled its market manipulation rule after the Federal Energy Regulatory Commission's (FERC) market manipulation rule. Like the Commission, FERC was given nearly identical market manipulation authority in the 2005 energy bill, and to date it has conducted 93 investigations resulting in 45 settlements totaling over $150 million in penalties. FERC's final market manipulation rule empowered it to look at futures market activities that affect wholesale energy markets within FERC's jurisdiction and its robust market monitoring division set up after Enron's manipulations monitors futures markets on a real-time basis in close coordination with the CFTC.

It is critical that the Commission enforce its market manipulation rule with the same proactive aggressiveness that FERC employs, to deter manipulative behavior, prosecute bad actors, and draw a bright line to distinguish legal from prohibited behavior. We request that you provide us a detailed description of the following:

- The FTC's efforts to enforce the Petroleum Market Manipulation Rule since it was finalized in 2009;

- The steps the Commission is taking and plans to take in response to recent price volatility in the petroleum market; and

- The FTC's current and planned efforts to work with the CFTC and other relevant agencies to prevent fraud or deceit in the petroleum market.

As Chairman Leibowitz stated when the Petroleum Market Manipulation Rule was finalized, "This new Rule will allow us to crack down on fraud and manipulation that can drive up prices at the pump. We will police the oil markets – and if we find companies that are manipulating the markets, we will go after them." The high gas prices that are hurting American families and businesses today represent the first major test of FTC's ability to protect consumers in this market. We urge you to use the authority of the Petroleum Market Manipulation Rule aggressively in order to protect consumers from unnecessarily high and volatile gas and diesel prices.

Sincerely,

Maria Cantwell

Jay Rockefeller

Olympia Snowe

Ron Wyden

Mark Begich